SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-366

CATHERINE FISHER, ET AL., *Petitioners,*

v.

COPELAND REFRIGERATION CORP., ET AL., *Respondents.*

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Sixth Circuit

BRIEF OF RESPONDENTS INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, AND ITS LOCAL 725, IN OPPOSITION

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OPINION BELOW

The United States Court of Appeals for the Sixth Circuit wrote no opinion but entered an order affirming for the reasons stated in the Memorandum Opinion and Order of the district court. The order of the court of appeals is printed as an appendix to the petition for a writ of certiorari (p. 38). The opinion of the district court is not reported but is reproduced as an appendix to the petition for a writ of certiorari (pp. 25-37).

QUESTIONS PRESENTED

1. Whether a complaint alleging that a union breached its duty of fair representation by failing to arbitrate grievances filed by the plaintiffs against their former employer was properly dismissed on the merits on the ground that no collective bargaining agreement was in existence at the time the grievances arose.

2. Where the plaintiffs sued under Section 301 of the Labor Management Relations Act alleging that they were wrongfully discharged in violation of an existing collective bargaining agreement, did the court properly grant summary judgment for the defendants where the undisputed evidence established that no contract was in existence at the time of the discharges.

STATEMENT OF THE CASE

The Facts

Copeland Refrigeration Corporation, hereinafter called the Company, and the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 725, hereinafter called IUE, were parties to a 1966 collective bargaining agreement applicable to the production and maintenance employees at the Company's Sidney, Ohio plant. The agreement expressly provided for termination on June 2, 1969 if either party gave notice of termination on or prior to that date (Pet. pp. 26-27).[1] On March 24, 1969 the IUE gave notice of termination, which both the Company and the IUE construed as terminating the agreement in accordance with its terms (Pet. pp. 4, 27-29).

[1] All page references are either to the petition for a writ of certiorari or to the appendix printed as part of the petition for a writ of certiorari.

On April 1, 1969, the International Union of District 50, United Mineworkers of America, filed a representation petition with the National Labor Relations Board seeking to be certified as the representative of the production and maintenance workers at the Company's Sidney, Ohio plant (Pet. pp. 4, 28). Although the Company sought to induce the IUE to agree to extend the terms of the prior collective bargaining agreement during the pendency of the representation proceeding, the IUE, on the advice of counsel, refused to negotiate a new collective bargaining agreement or to extend the 1966 agreement while there was a representation proceeding filed by another union pending (Pet. p. 28).

Not until June 1, 1970, after the IUE won the election conducted by the NLRB and the representation proceeding was finally concluded in the IUE's favor, did the IUE agree again to put into effect the agreement which had expired on June 2, 1969 (Pet. pp. 4, 28-29).

In February 1970, ten employees, who were the plaintiffs below, and are the petitioners here, were discharged by the Company for having allegedly participated in a sit-down strike at the Company's Sidney, Ohio plant (Pet. pp. 4, 31). They filed grievances alleging that they had been unlawfully discharged but the IUE did not seek arbitration because of the absence of any collective bargaining agreement at the time of the discharges (Pet. p. 26).

The Proceedings in the District Court

The plaintiffs filed suit in the district court under Section 301 of the Labor Management Relations Act, 29 USC 185, alleging that the Company breached its

collective bargaining agreement with IUE by discharging the plaintiffs and that IUE breached its duty of fair representation by refusing to take to arbitration the grievances over their discharges (Pet. pp. 25-26).

The Company and the IUE filed a Motion for Summary Judgment for lack of subject-matter jurisdiction for the reason that no collective bargaining agreement was in effect at the time of the discharges (Pet. p. 26). The court held that jurisdiction over the subject matter did exist (Pet. p. 35) but that there was no genuine issue of material fact (Pet. p. 35).

With respect to plaintiffs' contention that the Company and the IUE had orally agreed to extend the 1966 Collective Bargaining Agreement, the court pointed out that no oral agreement could be found since the evidence on which plaintiffs relied to establish the oral agreement showed that agreement was expressly made dependent on the signature of IUE Secretary Treasurer David J. Fitzmaurice and he had refused to sign (Pet. pp. 30-31).[2]

The district court carefully analyzed the plaintiffs' contention that the continuance in effect unchanged of the wages, hours and other substantive terms of employment (excluding check off and union security—see Pet. p. 5, fn. 2) after termination of the 1966 Collective Bargaining Agreement afforded the basis for implying that an agreement did exist (Pet. pp. 32-35). The court determined that the Company maintained the working conditions unchanged for the purpose of avoiding the potential liability of an unfair labor prac-

[2] In their petition for a writ of certiorari, petitioners admit that Fitzmaurice never signed the tendered letter reciting the oral agreement dependent upon his signature (Pet. p. 5).

tice which would arise if it violated the duty of neutrality during a representation contest between two unions or if it unilaterally changed conditions without bargaining (Pet. pp. 31-33). These legal consequences of a change explained the continuance of the terms and conditions of employment as they existed under the previous agreement and negated the inference that the Company had impliedly extended the duration of the 1966 Collective Bargaining Agreement (Pet. p. 33).

The district court accordingly held that, "The undisputed evidence discloses that there was no Collective Bargaining Agreement in existence at the time of the plaintiffs' alleged wrongful discharge in February 1970 and therefore the plaintiffs' claims will be dismissed on the merits" (Pet. p. 35).

Upon appeal the court of appeals entered an order affirming the judgment below for the reasons set forth in the district court's opinion and order (Pet. p. 39). The court of appeals did not write any opinion.

REASONS FOR DENYING THE WRIT

1. No Issue Respecting Dismissal for Lack of Jurisdiction is Presented

The district court expressly held that "the absence of an effective Collective Bargaining Agreement at the time of the dispute which is the subject of the action does not oust this court of jurisdiction under Section 301" (Pet. p. 35). Rather, the absence of a collective bargaining agreement was held to require dismissal of the plaintiffs' claims "on the merits" and the claims were "dismissed on the merits" (Pet. 35). The court of appeals affirmed for the reasons stated by the district court (Pet. p. 38).

The first question which petitioners set forth (Pet. p. 32) raises solely the issue of a dismissal for lack of jurisdiction. Since the courts below refused to dismiss for lack of jurisdiction but rather dismissed on the merits, this question is not here presented.

2. The Factual Challenge to the Finding That No Contract Existed Does Not Present Any Issue Which is Deserving of Review Here

The second of the questions presented in the petition raises solely issues of fact (Pet. p. 2). Thus the second question contains two evidentiary allegations which were urged below as showing a contract did exist at the time of the discharges and which were rejected by the courts below (Pet. pp. 30-33). The first of these was the alleged oral agreement; the second, the alleged belief of the Company, the IUE and all the employees that the contract was in existence, operated under and relied upon (Pet. pp. 2-3).

The correctness of resolutions of evidentiary issues does not serve to invoke review by this Court.

3. The Decision Below Presents No Conflict With Any Decision of This Court or With Any of the Courts of Appeals

The petitioner (Pet. p. 14) argues that a conflict between the circuits exists "if the holding below—that the mere refusal of the union to initial the Donovan letter of May 20, 1969 negates the existence of a contract—represents a determination of law." The petition does not identify which circuit allegedly adopted a conflicting principle nor which cases present the alleged conflict. The district court did not rule as a matter of law that the refusal of the union to initial the letter prevented the existence of a contract. Rather the failure to initial was a fact which, in view of the

view of the district court, made "clear that there was no meeting of the minds between the parties extending the 1966 to 1969 Collective Bargaining Agreement" (Pet. p. 31). Hence none of the cases cited (Pet. pp. 13-16) are in conflict. Each case turned on an evidentiary determination of whether or not a contract existed. None announces any rule of law in conflict with the decisions below.

The contention that this Court in *John Wiley* v. *Livingston,* 376 U.S. 543 (1964) authorized arbitration of "rights created not by a consensual act but rather by law" (Pet. p. 19) ignores the fact that the rights arbitrated in *Wiley* had a contractual basis since the issue there was not whether any contract existed but whether the successor employer was bound by the predecessor employer's collective bargaining agreement.

4. No Important Issue of Law Is Presented by the Decision Below

The essence of the petition seems to be that an important issue is presented by the injustice allegedly suffered by rank and file members of a union by being deprived of their "legitimate expectations" that they have the right of arbitration when, upon the expiration of a collective bargaining agreement, wages, hours and working conditions remain unchanged (Pet. p. 18). However, the discontinuance of union security and check off, as the petition admits occurred here (Pet. p. 5, fn. 2), certainly alerted all employees to the fact that the collective bargaining agreement was no longer in effect. Indeed, it seems likely that the plaintiffs relied upon the absence of a no-strike bar when they went on the strike which resulted in their discharges.

The decisions below do not present any important issue of law.

CONCLUSION

For the foregoing reasons it is urged that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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